

REMARKS

Claims 1-13 remain in the application. Claims 4-9 had been rejected under 35 USC § 112 first paragraph as being based upon a disclosure which is not enabling. Applicant respectfully traverses the rejection. The examiner is not taking the whole specification in making this rejection. The procedure for doing step (e) - (h) on page six is outlined on page 10 lines 2-19. The computerized distributive display is not essential to the method. It is the "correlating" which is outlined at page 10 lines 2-19. This recalibration is not absolutely necessary to get an approximate level that is better than the prior art. The extra "correlating" steps are claimed in dependent claims 5 and 6.

In addition, applicant presents his own declaration (Exhibit A) which states that he used excerpts from the patent application as the instructions for installing, calibrating and operating a level detection system according to the invention. See paragraph 12. In addition the declaration of John Wayne Cummings (Exhibit B) specifically states that he believes that the installation, calibration and instructions for use contained therein to be straight forward and that a level detection apparatus as described therein can be easily installed and operated by any one familiar with the delayed coking process.

Based upon the evidence presented the examiner's 35 USC § 112 first paragraph rejection has been overcome.

Claims 1-9 had also been rejected as being anticipated by Bruce, et al U.S. patent 4,176,052. Applicant respectfully traverses the rejection as may be applied to the amended claims. First, Bruce et al do not disclose a foam level detector but rather

a coke level detector.

With respect to claim 1, the Bruce et al reference disclose only a point detection system while the claims are now directed to a linear detector. See Cupit declaration paragraph 6 and Bruce at column 8 lines 31-34. Further point detectors cannot be lengthwise. See Cupit declaration paragraph 7. Finally, applicant particularly notes that claim 1 requires that the radiation detectors be calibrated in a certain way. Bruce, et al does not disclose any calibration method. See Cupit declaration paragraph 8 and the examiner's own admission. Where does the examiner note that radiation detectors may be calibrated? The rejection is based upon anticipation and all elements of applicant's claim must be disclosed in a single reference. Applicant requests an affidavit from the examiner under 37 CFR § 104 (d)(2) suitable as evidence to support the examiner's contention that a linear detector as now claimed, can be calibrated in the manner claimed. If no affidavit or further evidence is forthcoming then the claim is not obvious much less anticipated.

With respect to claim 2 the point detectors of Bruce et al may be placed along the length of the drum but they are not linear detectors as claimed.

With respect to claim 3 the point detectors of Bruce cannot be placed end to end because points have no ends.

With respect to claims 4-9, as noted above, Bruce et al do not disclose a foam level detection system but rather a predicted coke level system. The point detection system disclosed in Bruce, et al cannot be used in the method claimed because there can be no percentage of a point as defined in claim 4. See Cupit declaration paragraph

9.

While Bruce, et al may use several point detectors they cannot detect the level between the points and can only "predict" or impute that level. See Cupit declaration paragraph 7.

The examiner has only superficially addressed the elements of claims 4-9 and has not pointed out where Bruce et al disclose the recalibration steps of claim 5 and 6.

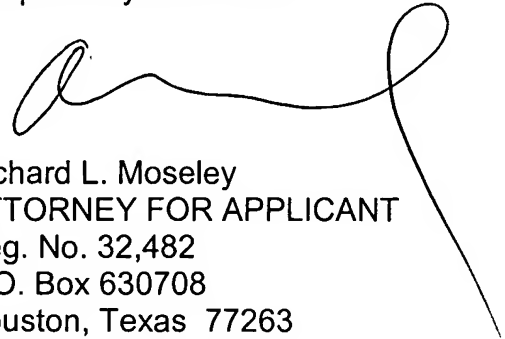
Anticipation under 35 USC 102 is a technical defense that must meet strict standards. A reference, to be anticipatory under § 102, must meet every critical element of the claim at issue. That is, each element of a claim under consideration must be found in a single prior art reference. *Lindemann Maschinenfabrik, GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984). The examiner has imputed too many of the claimed elements into the Bruce, et al disclosure. Silence in a reference is not a proper substitute for an adequate disclosure of facts. *In re Burt*, 148 USPQ 548 (CCPA 1966).

Applicant respectfully requests the examiner to look at the problem to be solved , i.e., to account for changing density of the material in the drum along the length (or height) of the drum in calibrating a radiation detection tube to read from 0-100% as the radiation count goes from an initial radiation count to a radiation count at 100% level. It is the use of multiple linear radiation detectors which can be calibrated and recalibrated individually which has solved the problem. See Cupit Declaration paragraphs 10 and 11. This is not disclosed in the prior art, Bruce or otherwise, and is thus new and unobvious. Claims 10-13 have been added to claim this feature as

part of the apparatus.

While applicant has only addressed the anticipation rejection he believes, for the above reasons, that the claims are not obvious over Bruce et al or any of the other cited art. Applicant respectfully requests early reconsideration and early allowance of the amended claims.

Respectfully Submitted

A handwritten signature in black ink, appearing to read 'Richard L. Moseley', with a long, sweeping horizontal line extending to the right.

Richard L. Moseley
ATTORNEY FOR APPLICANT
Reg. No. 32,482
P.O. Box 630708
Houston, Texas 77263
TEL: (713) 780-7047
FAX: (713) 780 7671

Date 5/19/05

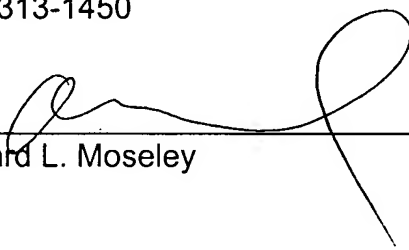


CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

Mail Stop Non Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

on 5/19/05.



Richard L. Moseley